

Deed

Wilton Junction Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

A blue ink signature, likely of the Minister for Planning, written in a cursive style.

© Lindsay Taylor Lawyers

A black ink signature, likely of a legal representative, written in a cursive style.

Wilton Junction Planning Agreement

Table of Contents

Parties	4
Background	4
Operative provisions	4
Part 1 - Preliminary	4
1 Interpretation	4
2 The Planning Agreement	9
3 Warranties	10
4 Further agreements	10
5 Surrender of right of appeal, etc.	10
Part 2 – Development Contributions	10
6 Provision of Development Contributions	10
7 Payment of monetary Development Contributions	11
8 Carrying out of Work	12
9 Application of s94, s94A and s94EF of the Act to the Development	12
10 Special Infrastructure Contributions	12
Part 3 - Provisions Relating to Work Items	12
11 Completion of Work Items	12
12 Works-As-Executed-Plan	12
Part 4 – Dispute Resolution	13
13 Dispute Resolution	13
Part 5 – Security and Enforcement	13
14 Security	13
15 Breach of obligations	14
16 Enforcement in a court of competent jurisdiction	14
Part 6 – Registration & Restriction on Dealings	15
17 Registration of this Deed	15
18 Restriction on dealings	15
Part 7 – Other Provisions	16
19 Risk, Release and Indemnity	16
20 Reporting by Developer	16

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

21	Notices	17
22	Approvals and Consent	18
23	Costs	18
24	Entire Deed	18
25	Further Acts	18
26	Governing Law and Jurisdiction	18
27	Joint and Individual Liability and Benefits	19
28	No Fetter	19
29	Illegality	19
30	Severability	19
31	Amendment	19
32	Waiver	19
33	GST	20
34	Termination	21
35	Explanatory Note	22
Schedule 1		23
Schedule 2		25
Schedule 3		26
Schedule 4		27
Schedule 5		44
Schedule 6		48
Schedule 7		51
Execution		56
Annexure A		57

Wilton Junction Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

The Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place,
Sydney NSW 2000 (**the Minister**)

and

Walker Corporation Pty Ltd ABN 95 001 176 263 of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Walker**)

and

Walker Group Holdings Pty Ltd ACN 001 215 069 of Level 21, Governor
Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Walker Group**)

Background

- A The Developer owns the Land as set out in Schedule 3. The Land is located in the local government area of Wollondilly Shire Council.
- B The Developer wishes to carry out the Development on the Land.
- C The Developer has sought a change to the environmental planning instruments applying to the Land to enable the Development to be carried out.
- D The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the change to the environmental planning instruments and the carrying out of the Development, in accordance with the terms and conditions of this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).



Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

Actual Cost means:

- (a) in relation to an Item of Road Work, the final certified contract cost inclusive of variations following compliance with all of the Developer's obligations under the WAD in respect of that Item of Road Work;
- (b) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the carrying out of the Item of Road Work and paid by the Developer to third parties for the following:
 - (i) design of the Item of Road Work, project management, fees, investigations, consultant fees, studies or reports specifically required for the Item of Road Work;
 - (ii) any Approval specifically required to be obtained for or in relation to the carrying out of the Item of Road Work; and
 - (iii) other matters only where the approval of the Minister to the inclusion of such costs has been given in writing to the Developer and
- (c) in respect of Item C2, the Actual Cost is reduced by the amount contributed to the Developer in respect of the cost of construction of the Item by a third party (being a party who is not a Related Body Corporate of any person who comprises or has comprised the Developer).

Approval includes approval, consent, licence, permission or the like.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time or an insurance company subject to prudential supervision by the Australian Prudential Regulatory Authority; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such amount as is required under this Deed) on demand.

Base CPI means the CPI number for the quarter ending March 2017.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, liability, action, proceeding or right of action.

Complying Development Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning given to it in the *Contaminated Land Management Act 1997* and includes asbestos and lead.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Cost Cap means the value for an Item of Road Work contained in Column 2 of the Table in respect of the Item of Road Work, as indexed in accordance with this Deed.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this Deed

CPI Adjustment Date means 1 July 2018 and each anniversary of 1 July 2018 thereafter.

Current CPI means the most recent CPI number for the quarter available as at the CPI Adjustment Date in the relevant adjustment year.

Dedication Land means all land required to be dedicated by the Developer to the Minister (or the Minister's nominee) under this Deed.

Deed means this planning agreement and includes any schedules, annexures and appendices to this planning agreement.

Department means and includes, where relevant, the NSW Department of Planning and Environment, the Secretary and the Minister.

Developer means Walker and Walker Group, jointly and severally.

Development means the development of the Land for urban purposes including residential housing, community facilities, retail and commercial and employment lands, parks, open space and infrastructure which is made permissible by the Instrument Change.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, as set out in Schedule 4, but does not include any Security or other benefit provided by a Party to the Minister to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Final Lot means a lot created in the Development for separate residential, retail or commercial occupation and disposition and which is not:

- (a) intended to be further subdivided (including to create a strata or community lot); or
- (b) a lot of a kind or created for a purpose that is otherwise agreed by the parties, or a Service Lot,

not being a lot created by a subdivision of the Land:

- (c) that is to be dedicated or otherwise transferred to the Minister or the Minister's nominee, or
- (d) on which is situated a dwelling-house that was in existence on the date of this Deed,

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means the change to environmental planning instruments proposed in the Planning Proposal.

Item means an Item specified in Column 1 of Table.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means the land described in and noted on the plan in Schedule 3.

LPI means Land & Property Information.

Location Plan means the plan in Annexure A.

Minister means the Minister for Planning, or person employed in the Department nominated by the Minister or the Secretary for the purposes of this Deed.

Monetary Contributions means Items A1, A2, and A3.

Novation Deed means the deed contained in Schedule 7.

Party means a party to this Deed.

Per Lot SIC Top-up Payment — see clause 4.1 of Part 2 of Schedule 4.

Pre-SIC Undeveloped Residential Final Lot — see clause 4.1 of Part 2 of Schedule 4.

Planning Application means any application for an Approval under the Act which seeks approval for the development of the Land.

Planning Proposal means the Wilton South East Precinct Planning Proposal, 990 Picton Road, Wilton prepared by Walker which relates to the Land.

Practical Completion means the Practical Completion of a Road Work in accordance with the WAD for that Road Work.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Related Body Corporate is a body that is related to a given entity within the meaning of s50 of the *Corporations Act 2001* (Cth)

Residential Final Lot means a Final Lot for separate residential occupation and disposition.

RMS means Roads and Maritime Services.

Road Work means the road work required to be carried out under this Deed, being Items C1, C2 and C3.

Roadwork Concept Plans means the drawings in Schedule 5.

Secretary means the Secretary of the NSW Department of Planning and Environment.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Minister provided in accordance with Schedule 6.

Service Lot means a registered lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority;
- (b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Deed;
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management;

- (d) for avoidance of doubt — association property within the meaning of the *Community Land Development Act 1989* that is to be used for any one or more of the purposes set out in (c) above.

SIC Determination means a determination under s94EE of the Act by the Minister of the level and nature of development contributions to be imposed as a condition of Development Consent on land within a Special Contributions Area which applies to a Special Contributions Area that includes all or part of the Land.

Special Contributions Area has the same meaning as in the Act.

Special Infrastructure Contribution (SIC) means a contribution towards the provision of infrastructure determined in accordance with the SIC Determination and required to be paid under a condition of a Development Consent for the Development.

Subdivision Certificate has the same meaning as in the Act.

Table means the table in Part 1 of Schedule 4 which is to be read subject to Part 2 of Schedule 4 and the remainder of this Deed, which prevail to the extent of any inconsistency.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Work means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on over or under land.

WAD means a Works Authorisation Deed between the Developer and RMS in respect of the construction of an Item of Road Work.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian currency.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.
- 1.2.18 This Deed confers rights only upon a person expressed to be a Party and not upon any other person.
- 1.2.19 Unless otherwise stated:
 - (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
 - (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other Party's credit.
- 1.2.20 Nothing in this Deed requires the Developer:
 - (a) to actually carry out all or any part of the Development; or
 - (b) to produce any or a particular number or type of Final Lots, or produce any Final Lots in any particular order.

2 The Planning Agreement

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.
- 2.2 This Deed commences and has force and effect on and from the date when the Parties have both executed the same copy of this Deed.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 2.3 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 2.4 This Deed applies to the Land, the Instrument Change and to the Development.
- 2.5 For avoidance of doubt, clause 2.4 does not cease to apply merely because this Deed is not registered on the title of a Final Lot or because the owner of a Final Lot is not a party to this Deed.

3 Warranties

- 3.1 The Parties warrant to each other that they:
 - 3.1.1 have full capacity to enter into this Deed, and
 - 3.1.2 are able to fully comply with their obligations under this Deed.

4 Further agreements

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

5 Surrender of right of appeal, etc.

- 5.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 5.2 Clause 5.1 does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) and, in doing so, rely on this Deed as a matter for consideration under section 79C(1)(a)(iia) of the Act, provided that the validity or reasonableness of, or the need for this Deed is not questioned in those proceedings.

Part 2 – Development Contributions

6 Provision of Development Contributions

- 6.1 The Developer is to make Development Contributions to the Minister, RMS or the Minister's nominee, in accordance with Schedule 4, and such contributions must :
 - 6.1.1 be made in accordance with the provisions of this Deed relating to the making of Development Contributions; and
 - 6.1.2 otherwise be made to the reasonable satisfaction of the Minister.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 6.2 Nothing in this Agreement precludes the Developer from electing to make a Development Contribution earlier than it is required to do so.
- 6.3 The Developer acknowledges and agrees that subject to s93E of the Act, the Minister:
- 6.3.1 has no obligation to use or expend Development Contributions made under this Deed for a particular purpose and has no obligation to repay the Development Contributions; and
- 6.3.2 in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.
- 6.4 For avoidance of doubt:
- 6.4.1 where this Deed requires that a Development Contribution be made prior to the issue of a Subdivision Certificate for the plan of subdivision that will create a given Residential Final Lot; and
- 6.4.2 the Subdivision Certificate is issued without the making of that Development Contribution in breach of this Deed,
- then despite the breach, it is a requirement of this Deed that no further Subdivision Certificate may be issued for a plan of subdivision that will create any Residential Final Lot until the Development Contribution (that was not made) is made,
- 6.5 The Development Contributions made under this Deed are in respect of the development of 3,000 Residential Final Lots only. No provision is made in this Deed for the Development Contributions which may be necessary in respect of the Development if any more than 3,000 Residential Final Lots are developed or proposed.
- 6.6 If the overall yield of Residential Final Lots on the Land is less than 3,000, but the Development includes more commercial floor space than proposed in the Planning Proposal, then the Minister may in his discretion, determine that Development Contributions which are payable under this Deed in respect of Residential Final Lots are instead payable in respect of commercial floor space, but not so as to exceed the total amount of Development Contributions which would have been required under this Deed if 3,000 Residential Final Lots were developed.

7 Payment of monetary Development Contributions

- 7.1 A monetary Development Contribution is made for the purposes of this Deed when the Minister receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Minister.
- 7.2 If a monetary Development Contribution required by this Deed is not paid by the due date for payment, the Developer will pay interest on the overdue amount until it is paid at a rate of 2% per annum above the loan reference rate charged by the Commonwealth Bank of Australia from time to time, and as required by the Minister.

8 Carrying out of Work

- 8.1 Without limiting any other provision of this Deed, Road Work is to be carried out in accordance with:
 - 8.1.1 a design and specifications approved by RMS under the terms of a WAD;
 - 8.1.2 any WAD for that Road Work,
 - 8.1.3 any relevant Approval;
 - 8.1.4 any other applicable law.
- 8.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by RMS to prepare or modify a design or specification relating to a Road Work.

9 Application of s94, s94A and s94EF of the Act to the Development

- 9.1 This Deed does not exclude the application of s94 and 94A of the Act to the Development.
- 9.2 This Deed does not exclude the application of s94EF of the Act to the Development.

10 Special Infrastructure Contributions

- 10.1 The Parties acknowledge that the Minister may, in the Minister's absolute discretion, make a SIC Determination.
- 10.2 If the Minister makes such a SIC Determination, clause 4 of Schedule 4 applies.
- 10.3 For the avoidance of doubt the Minister is under no obligation to make a SIC Determination.

Part 3 - Provisions Relating to Work Items

11 Completion of Work Items

- 11.1 Road Work is completed for the purposes of this Deed when the Developer gives the Minister written evidence that RMS is satisfied that the Road Work is complete for the purposes of any WAD relating to that Road Work.

12 Works-As-Executed-Plan

- 12.1 No later than 60 days after a Road Work is completed for the purposes of this Deed, the Developer is to submit to the Minister a full works-as-executed-plan in respect of the Road Work.

- 12.2 The Developer, being the copyright owner in the plan referred to in clause 12.1, gives the Minister a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

Part 4 – Dispute Resolution

13 Dispute Resolution

- 13.1 A dispute arises under this Deed if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 13.2 If a notice is given under clause 13.1 the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.3 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee to select a mediator.
- 13.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 13.5 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 13.6 The Parties are to share equally the costs of the President, the mediator, and the mediation.
- 13.7 This clause 13:
- 13.7.1 does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*); and
- 13.7.2 does not prevent urgent injunctive relief to keep a particular position.

Part 5 – Security and Enforcement

14 Security

- 14.1 The Developer must provide Security for the performance of its obligations under this Deed in accordance with Schedule 6.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

15 Breach of obligations

- 15.1 If the Developer is in breach of any obligation under this Deed, the Minister may give a written notice to the Developer:
- 15.1.1 specifying the nature and extent of the breach,
 - 15.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Minister in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, and
 - 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 15.2 If the Developer fails to fully comply with a notice referred to in clause 15.1, the Minister may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach, subject to and in accordance with clause 4.3 of Schedule 4 and Schedule 6.
- 15.3 Any reasonable costs incurred by the Minister in remedying a breach in accordance with clause 15.2 may be recovered by the Minister by either or a combination of the following means:
- 15.3.1 by calling-up and applying the Security provided by the Developer under this Deed (subject to and in accordance with clause 4.3 of Schedule 4 and Schedule 6), or
 - 15.3.2 as a debt due in a court of competent jurisdiction.
- 15.4 For the purpose of clause 15.3, the Minister's reasonable costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
- 15.4.1 the costs of the Minister's servants, agents and contractors reasonably incurred for that purpose,
 - 15.4.2 all fees and charges necessarily or reasonably incurred by the Minister in remedying the breach, and
 - 15.4.3 all legal costs and expenses reasonably incurred by the Minister, by reason of the breach.
- 15.5 Nothing in this clause 15 prevents the Minister from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 16.2.2 the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 6 – Registration & Restriction on Dealings

17 Registration of this Deed

- 17.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 17.2 Within 10 business days of receiving a copy of this Deed executed by the Minister, the Developer is to lodge with LPI:
 - 17.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer,
 - 17.2.2 certificates of title for the Land; and
 - 17.2.3 the written consent of each person referred to in s93H(1) of the Act to that registration,in order to enable the Deed to be registered on the title to the Land.
- 17.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 17.4 The Developer must provide the Minister with evidence of lodgement of this Deed with LPI for registration within 10 business days of lodgement, and evidence of the registration of this Deed within 10 business days of receiving notification from LPI that it has been registered.
- 17.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Minister or this Deed is terminated or otherwise comes to an end for any other reason.
- 17.6 The Parties agree to do all things reasonably required by the other Party to promptly release and discharge this Deed with respect to a Final Lot or Service Lot upon its creation.

18 Restriction on dealings

- 18.1 The Developer is not to:
 - 18.1.1 transfer the Land, or
 - 18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 18.1.3 the Developer has, at no cost to the Minister, first procured the execution by the person to whom the Land or part (other than a Final Lot or Service Lot) is to be transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Minister on terms reasonably satisfactory to the Minister and generally in accordance with the Novation Deed, and
- 18.1.4 the Minister has given written notice to the Developer stating that the Minister considers that the purchaser, transferee, assignee or novatee, other than a transferee of a Final Lot or Service Lot, is reasonably capable of performing its obligations under this Deed, and
- 18.1.5 the Developer is not in any unremedied breach of this Deed, and
- 18.1.6 the Minister otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 18.2 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.
- 18.3 Clause 18.1 does not apply to the conversion of any part of the Land into association property within the meaning of the *Community Land Development Act 1989* or common property (within the meaning of the *Strata Schemes Development Act 2015*).

Part 7 – Other Provisions

19 Risk, Release and Indemnity

- 19.1 The Developer performs this Deed at its own risk and its own cost.
- 19.2 The Developer releases the Minister from any Claim it may have against the Minister arising from any negligent act or omission by the Developer (or any person engaged by the Developer, including a contractor) in connection with the performance of the Developer's obligations under this Deed.
- 19.3 The Developer indemnifies the Minister from and against all Claims that may be sustained, suffered, recovered or made against the Minister and against any Costs incurred arising from any act or omission by the Developer, its servants or agents in connection with the performance of the Developer's obligations under this Deed, except where the damage, expense, loss or liability suffered or incurred by the Minister is caused or contributed to by any negligent act or negligent omission of the Minister or any of the Minister's servants or agents (including employees employed within the Department).

20 Reporting by Developer

- 20.1 By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report in a form acceptable to the Secretary for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 20.1.1 details of all Development Consents, Construction Certificates, Complying Development Certificates and Subdivision Certificates issued in relation to the Development;
- 20.1.2 a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
- 20.1.3 a forecast in relation to the anticipated progression and completion of the Development;
- 20.1.4 a compliance schedule showing the details of all Development Contributions provided under this Deed as at the date of the report and indicating any non-compliance with this Deed and the reason for the non-compliance; and
- 20.1.5 when the Developer expects to lodge the next Planning Application.
- 20.2 Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this Deed.
- 20.3 This clause 20 ceases to apply 12 months after the date when the Developer has completed all of the Development Contributions required to be made under this Deed.

21 Notices

- 21.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
 - 21.1.1 delivered or posted to that Party at its address set out in Schedule 2,
 - 21.1.2 faxed to that Party at its fax number set out in Schedule 2, or
 - 21.1.3 emailed to that Party at its email address set out in Schedule 2:
- 21.2 If a Party gives another Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 21.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 21.3.1 delivered, when it is left at the relevant address,
 - 21.3.2 sent by post, 2 business days after it is posted,
 - 21.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 21.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 21.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

22 Approvals and Consent

- 22.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 22.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

23 Costs

- 23.1 The Developer is to pay to the Minister the Minister's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed on execution of this Deed (if the costs are known and notified to the Developer prior to that time) or otherwise within 7 days of a written demand by the Minister for such payment.
- 23.2 The Developer is also to pay to the Minister the Minister's reasonable costs of enforcing this Deed within 7 days of a written demand by the Minister for such payment, but only when there is an actual breach of the Deed by the Developer.

24 Entire Deed

- 24.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 24.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

25 Further Acts

- 25.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

26 Governing Law and Jurisdiction

- 26.1 This Deed is governed by the law of New South Wales.
- 26.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 26.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

27 Joint and Individual Liability and Benefits

- 27.1 Except as otherwise set out in this Deed:
- 27.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 27.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

28 No Fetter

- 28.1 Nothing in this Deed shall be construed as requiring the Minister to do anything that would cause the Minister to be in breach of any of the Minister's obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 28.2 For the avoidance of doubt, clause 28.1 does not affect any obligation of a consent authority (under section 79C(1)(a)(iia) of the Act) to take this Deed into consideration.

29 Illegality

- 29.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

30 Severability

- 30.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 30.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

31 Amendment

- 31.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

32 Waiver

- 32.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 32.2 A waiver by a Party is only effective if it:
- 32.2.1 is in writing,
 - 32.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 32.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 32.2.4 is signed and dated by the Party giving the waiver.
- 32.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 32.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 32.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

33 GST

Note: The Parties have a common belief that:

- GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) under this Deed, because the Developer has entered into this Deed in order to secure a right to develop land (as per Division 82 of the GST Law; and/or
- the Deed provides for fees or charges for a supply of a regulatory nature made by an Australian government agency and are therefore not the provision of consideration (as per Division 81 of the GST Law and regulation 81.15.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999*).

This clause 33 has been included in the event that the Parties are mistaken.

33.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- 33.2 Subject to clause 33.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 33.3 Clause 33.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 33.4 No additional amount shall be payable by the Minister under clause 33.2 unless, and only to the extent that, the Minister (or the representative member of any GST group of which the Minister is a member) is entitled to an Input Tax Credit for the Minister's acquisition of the Taxable Supply giving rise to the liability to pay GST, and shall only be payable after the benefit of that Input Tax Credit has been received.
- 33.5 No payment of any amount pursuant to this clause 33, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 33.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 33.7 This clause continues to apply after expiration or termination of this Deed.

34 Termination

- 34.1 A Party may terminate this Deed by giving 42 days written notice to the other Party if either:
- 34.1.1 all of the following circumstances exist:
- (a) this Deed has commenced prior to the making of the Instrument Change;
 - (b) the Instrument Change has not been made within 12 months of the date this Deed commenced;
 - (c) the Party seeking to terminate this Deed gives the other Party notice of its opinion, which must have been reasonably formed, that the Instrument Change is unlikely to be made;
 - (d) at least one calendar month has elapsed since the date of the notice referred to in paragraph (c); and
 - (e) the Instrument Change has not been made; or
- 34.1.2 the Instrument Change has the effect that satisfactory arrangements must be made for the provision of state public infrastructure before the making of a development application (or grant of a Development Consent) for all or any part of the Development and within 6 months of the date of the Instrument Change, the Secretary has not certified that satisfactory arrangements have been made for the provision of state public infrastructure in respect of the Development as a result of entry into this Deed.
- 34.2 Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

reason, will not merge on the occurrence of that event but will remain in full force and effect.

35 Explanatory Note

- 35.1 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

Section 93F Requirements

Requirement under the Act	This Deed
Planning instrument and/or development application – (section 93F(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a development application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) No
Description of land to which this Deed applies – (section 93F(3)(a))	The Land is described in Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))	Amendment to the <i>Wollondilly Local Environmental Plan 2011</i> to make the Development permissible
The scope, timing and manner of delivery of contributions required by this Deed – (section 93F(3)(c))	Part 2 and Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A are not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this Deed if section 94 applies – (section	No. The Development Contributions under the Deed must not be taken into

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

93F(3)(e))	consideration in determining a contribution under s94 of the Act in respect of the Development or any other development on the Land.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See Part 4
Enforcement of this Deed – (section 93F(3)(g))	See Part 2 and Schedule 4 (in relation to the preconditions for the issue of Subdivision Certificates) and Part 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 28

Schedule 2

(clause 1.1)

Address for Service

The Minister:

Name: The Minister for Planning
Address: Level 15, 52 Martin Place, Sydney NSW 2000
Facsimile: (02) 9228 6455
Email: Russell.Simpson@planning.nsw.gov.au
Representative: Russell Simpson

Developers:

Name: Walker Corporation Pty Ltd
Address: Level 21 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Facsimile: not applicable
Email: Gerry.beasley@walkercorp.com.au
Representative: Gerry Beasley

Name: Walker Group Holdings Pty Ltd
Address: Level 21 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
Facsimile: not applicable
Email: Gerry.beasley@walkercorp.com.au
Representative: Gerry Beasley

Schedule 3

(clause 1.1)

Land

Address	Title Details	Landowner
5 Janderra Lane, Wilton	Lot 51 in DP 626650	Walker
15 Janderra Lane, Wilton	Lot 75 in DP 837310	Walker
990 Picton Road, Wilton	Lot 16 in DP253158	Walker
1000 Picton Road, Wilton	Lot 25 in DP253157	Walker
1010 Picton Road, Wilton	Lot 26 in DP253157	Walker
1080 Picton Road, Wilton	Lot 29, 30, 34 and 38 in DP 814280	Walker Group
1114 Picton Road, Wilton	Lot 1 in DP1076362	Walker Group
1140 Picton Road, Wilton	Lot 1 in DP 587498	Walker
Picton Road, Wilton	Lot 2 in DP1076362	Walker
Picton Road, Wilton	Lot 2 in DP108340	Walker
72 Almond Street, Wilton	Lot 1 in DP1018965	Walker
1090 Argyle Street, Wilton	Lots 32, 33, 36 and 37 in DP 814280 Lot 2 Section 13 in DP 759094	Walker

Schedule 4

(Clause 6)

Development Contributions

Part 1 –Table

(see next page)

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

Column 1 Item/ Contribution	Column 2 Value	Column 3 Manner & Extent	Column 4 Timing
A. Monetary Contributions			
1. Hume Highway and Picton Road Interchange Interim Upgrade	\$10,600,000 indexed in accordance with clause 1(of Part 2 of this Schedule 4	\$3,533.33 per Residential Final Lot to be paid in 8 instalments of \$1,325,000.	<p>Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates Residential Final Lots, an instalment of \$1,325,000 must be paid for each tranche of 200 Residential Final Lots (or part thereof) to which the plan of subdivision relates, provided that the total amount of contributions does not exceed the amount in Column 2.</p> <p>The total contribution equal to the value in Column 2 for this Item must be paid prior to the issue of the Subdivision Certificate for the 1401st Residential Final Lot.</p>

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

2. Public Transport	\$2,730,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	\$910.00 per Residential Final Lot to be paid in 15 instalments of \$182,000.	<p>Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates Residential Final Lots, an instalment must be made for each tranche of 200 Residential Final Lots (or part thereof) to which the plan of subdivision relates.</p> <p>The total contribution equal to the value in Column 2 for this Item must be paid prior to the issue of the Subdivision Certificate for the 2801st Residential Final Lot, provided that the total amount of contributions does not exceed the amount in Column 2.</p>
---------------------	--	---	--

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

3. Social Infrastructure	\$3,360,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	\$1,120.00 per Residential Final Lot paid in 15 instalments of \$224,000.	<p>Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates Residential Final Lots, an instalment must be made for each tranche of 200 Residential Final Lots (or part thereof) to which the plan of subdivision relates, provided that the total amount of contributions does not exceed the amount in Column 2.</p> <p>The total contribution equal to the value in Column 2 for this Item must be paid prior to the issue of the Subdivision Certificate for the 2801st Residential Final Lot.</p>
B. Dedication of Land			
1. Land for Picton Road duplication between Hume Highway and Almond St	\$800,000 (based on a 4 hectare, 70m long strip of land) which is to be substituted with the amount determined under clause 3.2 of Part 2 of Schedule 4 and indexed under clause 3.2(g) of Part 2 of Schedule 4.	A strip of the Land adjacent to Picton Road generally in the location shown on the Location Plan as ' <i>Land for Picton Road Dedication</i> ' with dimensions determined by RMS.	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1500th Residential Final Lot

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

2. Land for primary school	\$7,500,000 which is to be substituted with the amount determined under clause 3.2 of Part 2 of Schedule 4 and indexed under clause 3.2(g) of Part 2 of Schedule 4.	A piece of land of approximately 3 hectares in area to the reasonable satisfaction of the Department of Education and being the part of the Land generally as shown as 'Land for Primary School' on the Location Plan	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1500 th Residential Final Lot
C. Carrying out of Work			
1. Picton Road and Pembroke Parade intersection upgrade	\$4,750,000 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with Part 2 of the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the first Residential Final Lot
2. Picton Road and Almond Street Grade Separation	\$15,400,000 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with Part 3 of the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1,500 th Residential Final Lot
3. Picton Parade West Grade Separation with Picton Road	\$15,400,000 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with Part 4 of the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 2000 th Residential Final Lot

Part 2 – Development Contributions Provisions

1. Monetary Contributions

- (a) The Developer must make Monetary Contributions in accordance with the Table and this clause.
- (b) On each CPI Adjustment Date, the value of the Monetary Contributions remaining to be paid pursuant to the Table will be adjusted by multiplying the amount of the Monetary Contributions by an amount equal to the Current CPI divided by the Base CPI.
- (c) On the making of a Monetary Contribution in accordance with clause 1(a) of this Schedule 4, the Minister must, as soon as practicable, issue a notice to the Developer stating the amount of the offset to be granted for the Monetary Contribution which will be the amount of monetary Development Contributions paid (**Monetary Offset**).

2. Design, Construction and Handover of the Road Work

2.1 Pre-conditions to Commencement of Road Work

Prior to commencement of an Item of Road Work, the Developer must:

- (a) if Development Consent is required - provide evidence to the Minister that it has obtained Development Consent for the Item of Road Work;
- (b) enter into a WAD with RMS in respect of the Item of Road Work, on such terms and conditions as are:
 - (i) consistent with the requirements of this Deed, including this Schedule 4; and
 - (ii) acceptable to RMS and the Minister,
- (c) provide a copy to the Minister of the executed WAD to carry out the Item of Road Work; and
- (d) provide evidence to the Minister of the security provided for the Item of Road Work under the WAD for that Item of Road Work having regard to the requirements of clause 2 of Schedule 6 of this Deed.

2.2 Timing of Road Work

- (a) The Developer must complete each Item of Road Work in accordance with the WAD for that Item of Road Work by no later than the time specified in Column 4 of the Table.

2.3 Road Work Offset

- (a) Unless otherwise agreed with the Minister, within 3 months of each Item of Road Work achieving Practical Completion under the relevant WAD, the Developer must provide to the Minister documentation that evidences the Actual Cost of the Item of Road Work (**Offset Documentation**). The Offset Documentation is to

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

include an independent certification of the Actual Cost from an independent quantity surveyor engaged by the Developer who is a member of the Australian Institute of Quantity Surveyors.

- (b) Within 3 months of the Offset Documentation being provided to the Minister, the Minister, acting reasonably, is to notify the Developer of the amount of the approved cost of the Item of Road Work (**Road Work Offset**) under this Deed which will be the lesser of the Cost Cap and the Actual Cost of the Item of Road Work. The Minister must accept the accuracy of the independent certification of the Actual Cost provided under clause 2.3(a) unless the Minister has obtained a further independent certification of the Actual Cost from an independent quantity surveyor engaged by the Minister who is a member of the Australian Institute of Quantity Surveyors. Any such further certification must be provided to the Developer who must be given a reasonable opportunity to comment before any decision as to the Actual Cost is made. Any decision as to the Actual Cost may only be based on the two certifications and any comment made by the Developer.
- (c) On each CPI Adjustment Date before issue of a notice under clause 2.3(b), each value of the Cost Cap will be adjusted by multiplying the amount of the Cost Cap by an amount equal to the Current CPI divided by the Base CPI.
- (d) If the cost of the Item of Road Work exceeds the Cost Cap, the Parties agree that within three months of achieving Practical Completion of the Item of Road Work, the Developer may submit to the Minister in writing:
 - (i) the reasons for the exceedance; and
 - (ii) a recommendation for a revised Cost Cap.
- (e) The Minister may or may not, at the Minister's absolute discretion, agree in writing to an increase in the Cost Cap as a consequence of receiving written notification under clause 2.3(c).
- (f) If the Minister elects to agree to an increase under clause 2.3(c), despite anything else in this Deed, the Cost Cap is set at the increased monetary amount so determined in writing by the Minister.
- (g) The Developer acknowledges and agrees that its entitlement to the Road Work Offset is proportionally reduced in circumstances where RMS has exercised its step in rights under the relevant WAD or the Developer otherwise fails to provide the Item of Road Work pursuant to the relevant WAD and the extent of the reduction must reflect the proportion of the costs of carrying out the Item of Road Work (being costs that this Deed anticipates will be borne by the Developer) that were instead borne by RMS.
- (h) The Developer must complete each Item of Road Work regardless of whether the cost of doing so exceeds the Cost Cap.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

3. Dedication of Dedication Land

3.1 Dedication Land as a Development Contribution

The Developer must transfer the Dedication Land in accordance with clause 3.4 of this Schedule 4 and the Table.

3.2 Valuation of Dedication Land

(a) The Developer must:

- (i) provide the Minister with a valuation of each Item of the Dedication Land prior to transfer of that Item of Dedication Land to the Minister or the Minister's nominee in accordance clause 3.4; and
- (ii) ensure the valuation has been carried out:
 - (A) by a valuer appointed in accordance with this clause 3.2 of this Schedule 4; and
 - (B) in accordance with this clause 3.2 of this Schedule 4.

(b) Where the Developer has provided the Minister with a valuation of an Item of Dedication Land in accordance with this clause 3.2 of this Schedule 4, the Minister, within 20 business days of receiving the valuation, must appoint a valuer to prepare a valuation report for the Item of Dedication Land for the Minister, who:

- (i) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
- (ii) is then practising as a valuer;
- (iii) is independent and not related to any party to this Deed;
- (iv) has at least 5 years' experience in valuations; and
- (v) has a practical understanding of the development and planning process to prepare a valuation for the Dedication Land.

(c) Any valuation provided by each Party's valuer must comply with the following:

- (i) the valuation report prepared by the valuer must confirm that the valuer satisfies each of the requirements set out in this clause 3.2 of this Schedule 4.
- (ii) the valuer is required to determine the market value of the Item of Dedication Land as a freehold lot with vacant possession as at the date of inspection.
- (iii) in determining the market value of the Item of Dedication Land, the valuer must assume that the land:
 - (A) is free of all encumbrances;
 - (B) is or can be fully serviced to its boundary;

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (C) has appropriate public road frontage and access. and
 - (D) is capable of being developed without reliance on the implementation of any additional public infrastructure external to the site.
- (iv) in determining the market value of the Item of Dedication Land, the valuer must comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this clause 3.2, in which case this clause 3.2 prevails.
- (v) the market value of the Dedication Land must have regard to the permissible uses of the land (or the permissible uses the land would have had, but for any restrictive zoning that was imposed by reason of the land's designation under this Deed);
- (vi) the valuer must provide a comprehensive valuation report which must include the following matters:
 - (A) confirmation of instructions;
 - (B) identification of the subject land being valued;
 - (C) date of inspection and valuation;
 - (D) registered proprietor;
 - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title;
 - (F) services and amenities;
 - (G) site identification;
 - (H) location description, including any external factors that influence the desirability of the Item of Dedication Land, either positively or negatively;
 - (I) current zoning and town planning considerations (and, if relevant, the zoning and town planning considerations that would have been, but for any restrictive zoning that was imposed by reason of the land's designation under this Deed);
 - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
 - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation; and
 - (L) the valuation amount.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (d) If two or more of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each valuer must undertake a feasibility or residual land value approach to the valuation.
- (e) In the event that the valuations prepared by each valuer vary by less than 10%, the average of the valuation amounts will be adopted as the value for the Item of Dedication Land.
- (f) In the event that the valuations vary by more than 10%, then the valuers must meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the valuers must review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the Item of Dedication Land will be determined by a further valuer appointed by the President of the Australian Property Institute (NSW Division). If a further valuer is appointed:
 - (i) that further valuer must:
 - (A) prepare a valuation report for the Item of Dedication Land in accordance with this clause 3.2 of this Schedule 4; and
 - (B) act as an expert whose decision is final and binding on the parties, in the absence of manifest error; and
 - (ii) the Developer and the Minister must pay the costs associated with the appointment of the further valuer in equal proportions.
- (g) Once a valuation has been determined, on each CPI Adjustment Date before the issue of a notice under clause 3.6, the valuation will be adjusted by multiplying the amount of the valuation by an amount equal to the Current CPI divided by the most recent CPI number for the quarter available as at the time that the valuation is determined.
- (h) Where the Minister exercises the compulsory acquisition right under clause 3.5 of this Schedule 4, the valuation process set out in clause 3.2 of this Schedule 4 will apply.

3.3 Subdivision of Dedication Land

- (a) Before transferring the Dedication Land in accordance with clause 3.4 of this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent (if required) and any other approvals necessary to create a separate lot for each Item of Dedication Land; and
 - (ii) in accordance with the applicable Development Consent and all other necessary approvals, prepare and register a plan of subdivision to create a separate lot for each Item of Dedication Land.

3.4 Transfer of Dedication Land

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (a) The Developer must procure the transfer of the part of the Dedication Land for road widening (**Road Widening Land**) to the RMS in accordance with this Deed:
 - (i) prior to the time specified in the Table; or
 - (ii) if the Instrument Change has been made — at the time required by RMS, whichever is the earlier.
- (b) The Developer must procure the transfer of the part of the Dedication Land proposed for a school site (**Education Land**) to the Minister (or the Minister's Nominee) in accordance with clause 3.4 of this Schedule 4 prior the time specified in the Table.
- (c) In satisfying its obligations under clause 3.4(a) and (b) of this Schedule 4, the Developer must:
 - (i) deliver to the RMS (in respect of the Road Widening Land) and the Minister (or the Minister's nominee) in respect of the Education Land (**Relevant Dedication Authority**):
 - (A) a form of transfer in respect of the Dedication Land in favour of the Relevant Dedication Authority free of cost, executed by the Developer and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (B) the certificate of title for the Dedication Land;
 - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General of the LPI in relation to the transfer of the Dedication Land; and
 - (iii) take any other necessary action to give effect to the transfer of the title of the Dedication Land to the Relevant Dedication Authority free of all encumbrances (including any mortgages, easements, covenants and planning agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Relevant Dedication Authority in writing.
- (d) For avoidance of doubt, clause 3.4(c)(iii) does not apply in relation encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the Dedication Land could not prevent from affecting the Dedication Land and in respect of which no action can be taken by the Developer or owner of the Dedication Land .
:
- (e) Despite clause 3.4(c)(iii), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 3.4(c)(iii), then:
 - (i) the Developer may request that the Minister agree to accept the land subject to those encumbrances and affectations; and

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,

the Minister may agree to accept the land subject to those encumbrances; and

- (iii) in other circumstances, the Minister may withhold the Minister's agreement at the Minister's absolute discretion.
- (f) The Developer indemnifies and agrees to keep indemnified the Relevant Dedication Authority against all Claims made against the Relevant Dedication Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred to the Relevant Dedication Authority.
- (g) The Developer will pay all rates and Taxes owing in respect of the Dedication Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Dedication Land pursuant to clause 3.4 of this Schedule 4, after which time the Relevant Dedication Authority will be responsible for any rates and Taxes in relation to the Dedication Land.
- (h) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the RMS or the Minister's nominee) in relation to any failure of the Developer to comply with clauses 3.1 to 3.4 of this Schedule 4.
- (i) The parties agree that this Deed operates as a deed poll in favour of RMS where RMS is the Relevant Dedication Authority.

3.5 Compulsory Acquisition

- (a) If the Developer does not transfer an Item of Dedication Land as required by clause 3.4 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister compulsorily acquiring the whole or any part of the Item of Dedication Land and any other land required in connection with that Dedication Land in accordance with the Just Terms Act for the amount of \$1.00.
- (b) The Developer and the Minister agree that:
 - (i) this clause 3.5 is an agreement between them for the purposes of section 30 of the Just Terms Act; and
 - (ii) in this clause 3.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Item of Dedication Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Developer is liable to transfer the Item of Dedication Land to the Relevant Dedication Authority in accordance with this clause.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (d) The Developer indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Dedication Land under this clause.
- (e) The Developer must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Dedication Land and any other land required in connection with the Dedication Land as contemplated by this clause.

3.6 Dedication Land Offset

Upon the transfer of an Item of Dedication Land to the Relevant Dedication Authority in accordance with clause 3.4 of this Schedule 4 (excluding where the Minister has exercised the Minister's compulsory acquisition rights under clause 3.5 of this Schedule 4), the Minister must, within 30 business days, issue a notice to the Developer stating the value of the Item of Dedication Land calculated in accordance with clause 3.2 of this Schedule 4 (**Dedication Land Offset**).

4. SIC Offsets

Note:

The Parties intention is that whilst a SIC Determination may not have been made as at the date of this Deed, the provisions of this Deed operate so that an aspect of the SIC Determination is effectively backdated to the date of this Deed, provided it is made before all Development Contributions required by the Deed are made.

As a result, and to fairly apportion the value of the VPA Contributions evenly over the course of the Development, any credit available in respect of the VPA Contributions is to be applied against the sum of the Pre-SIC Amount and SICs that are required to be made under Development Consents. A SIC Top-up Payment is required on making of the first SIC Determination (in relation to developed lots approved before a SIC Determination was made) and a further per-lot top-up payment is required in relation to undeveloped lots that were approved before the first SIC Determination is made). These top-up payments, like the VPA Contributions, are offset against the sum of the Pre-SIC Amount and SICs.

4.1 Definitions

- (a) **Attributable VPA Contribution** means AVC in the following formula:

$$AVC = \frac{A \times B}{3000}$$

where

A is the sum of the values of the VPA Contributions contained in Column 2 of the Table on the date the first SIC Determination is made;

B is the number of Residential Final Lots for which Development Consent has been granted prior to the first SIC Determination being made;

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (b) **Available Credit** means any amount of the SIC Offset which has not been applied to satisfy any SIC liability or Pre-SIC Amount in respect of the Development;
- (c) **Credit Recipient** means any person comprising the Developer;
- (d) **Per Lot SIC Top-up Payment** means the SIC Top-up Payment divided by the number of Residential Final Lots for which Development Consent has been granted prior to the first SIC Determination being made;
- (e) **Pre-SIC Amount** means the amount that would have been payable in respect of SICs for that part of the Development for which Development Consents have been granted before the date that the first SIC Determination is made;
- (f) **Pre-SIC Undeveloped Residential Final Lot** means a Residential Final Lot for which Development Consent was granted before the first SIC Determination was made, but for which no Subdivision Certificate was issued before the first SIC Determination.
- (g) **SIC Offset** means the amount calculated in accordance with clause 4.4(a);
- (h) **SIC Top-up Payment** means the difference between the Pre-SIC Amount and the Attributable VPA Contribution; and
- (i) **VPA Contributions** means the Development Contributions in the Table.

4.2 SIC Determination prior to any Development Consent

If a SIC Determination is made at any point before the grant of any Development Consents for the Development, then the Developer will be entitled to apply for a SIC Offset in accordance with clause 4.4 and 4.5.

4.3 SIC Determination during Development

- (a) If the first SIC Determination is made at any point after the grant of any Development Consents for the Development, but before all of the VPA Contributions are made, then the Developer will be required to pay the SIC Top-up Payment.
- (b) The Minister may determine the Pre-SIC Amount in the Minister's absolute discretion, provided that the Pre-SIC Amount cannot be more than the sum of any SICs that would have been payable under Development Consents for the Development granted prior to the date the first SIC Determination is made, if the first SIC Determination had applied to those Development Consents.
- (c) As soon as practicable after the date that the first SIC Determination is made, the Minister will notify the Developer of:
 - (i) the Pre-SIC Amount;
 - (ii) the Attributable VPA Contribution; and
 - (iii) the SIC Top-up Payment.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (d) Within 10 days of receipt of the notice from the Minister under clause 4.3(c), the Developer must either:
 - (i) pay an amount to the Minister equal to the sum of the Per Lot SIC Top-up Payments for each Residential Final Lot that is depicted in a plan of subdivision that is the subject of a Subdivision Certificate issued prior to the first SIC Determination being made; or
 - (ii) provide a Bank Guarantee for that same amount, to secure the payment of that amount.
- (e) As soon as practicable after the Developer has complied with clause 4.3(d), the Minister must issue a notice to the Developer stating the amount of the offset to be granted in respect of the Per Lot SIC Top-up Payments, which will be the amount of Per Lot SIC Top-up Payments made or the subject of the Bank Guarantee.
- (f) The Minister may call upon a Bank Guarantee provided in accordance with clause 4.3(d)(ii) of this Schedule 4 where the Developer has failed to pay the amount required under clause 4.3(d)(i) of this Schedule 4 within 8 weeks of the receipt of the notice from the Minister.
- (g) When this occurs, the Minister may retain such monies in lieu of the amounts that would have otherwise been payable under clause 4.3(d)(ii) of this Schedule 4.
- (h) If the Developer pays the amount required under clause 4.3(d)(i) of this Schedule 4 (prior to any calling upon of the Bank Guarantee by the Minister) the Minister will promptly return the Bank Guarantee(s) (less any costs, charges, duties and taxes payable) to the Developer.
- (i) Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates any Pre-SIC Undeveloped Residential Final Lot, the Developer must pay the Per Lot SIC Top-up Payment for each Pre-SIC Undeveloped Residential Final Lot the subject of the given Subdivision Certificate.
- (j) On the second and subsequent CPI Adjustment Date after the first SIC Determination is made, the value of any Per Lot SIC Top-up Payment remaining to be paid will be adjusted by multiplying the amount of the Per Lot SIC Top-up Payments remaining to be paid by an amount equal to the Current CPI divided by the Current CPI as at the first CPI Adjustment Date that occurred immediately after the first SIC Determination was made.
- (k) As soon as practicable after the Developer has made a payment under clause 4.3(i), the Minister must issue a notice to the Developer stating the amount of the offset to be granted in respect of that payment, which will be the amount of the payment.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

4.4 SIC Offset

- (a) The Developer may request an offset against SICs that are required to be made under Development Consents for the Development and any Pre-SIC Amount to the extent of the sum of the amounts contained in notice(s) issued to the Developer under:
 - (i) clause 1(c) of this Schedule 4 in respect of the Monetary Offset;
 - (ii) clause 2.3(b) of this Schedule 4 in respect of the Road Work Offset;
 - (iii) clause 3.6 of this Schedule 4 in respect of the Dedication Land Offset, and
 - (iv) clause 4.3(e) and clause 4.3(k) of this Schedule 4 in respect of Per Lot SIC Top-up Payments.

4.5 Potential Credit

- (a) If (or once) a Pre-SIC Amount exists, the Developer must firstly use any Available Credit to offset this amount.
- (b) The Developer must:
 - (i) if no Pre-SIC Amount exists — firstly,
 - (ii) if a Pre-SIC Amount exists — secondly,use any Available Credit to satisfy any SIC required to be made in respect of the Development, unless the Minister agrees otherwise in the Minister's absolute discretion.
- (c) The Developer is not obliged to pay the SIC to the extent that it is offset by an Available Credit.
- (d) If the amount of a SIC required to be made exceeds the Available Credit, the Developer must pay the difference between the amount of the SIC and the Available Credit at the time when that SIC is due for payment. If the amount of a SIC required is less than an amount as indexed, of Available Credit as per the relevant notice issued under clause 4.4(a), the unused portion of the indexed amount under the notice remains as Available Credit.
- (e) If there is any Available Credit remaining when:
 - (i) all VPA Contributions have been made; and
 - (ii) all SICs and SIC Top-up Payments (if any are required) have been paid (to the extent required after application of any Available Credit);then, provided that a SIC Determination is made before all VPA Contributions are made, and Developments Consents for 3000 Residential Final Lots in the Development have been granted, the Available Credit may be used by:
 - (iii) the Credit Recipient, provided that all of the persons comprising the Developer have provided written consent to this to the Minister's satisfaction,

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (iv) a Related Body Corporate of the Credit Recipient or a partnership of those related entities, or
- (v) any other person that the Minister might approve on written request by all of the persons comprising the Developer in the Minister's absolute discretion,

to satisfy any special infrastructure contribution within the meaning of the Act which is required to be made in respect of the development of land within the Priority Growth Area known as Wilton New Town after the date of this Deed, if that land is owned by:

- (i) the Credit Recipient,
- (ii) a Related Body Corporate of the Credit Recipient or a partnership of those related entities, or
- (iii) any other entity that the Minister might approve on written request by all of the persons or entities comprising the Developer in the Minister's absolute discretion.

4.6 Indexation of SIC Offset

- (a) Once a SIC Determination is made, the amounts contained in notices referred to in clause 4.4(a) which have not been offset against a SIC or the Pre-SIC Amount are to be indexed from the date of the relevant notice until the amount is applied to satisfy a SIC or the Pre-SIC Amount, in the same manner in which SICs are indexed under the SIC Determination, or if SICs are not to be indexed under the SIC Determination, in the same manner as the amounts in the notices were indexed before the notice was issued.
- (b) For the purpose of clause 4.6(a) the amounts contained in notices issued under clause 4.4(a), as indexed, will be considered to have been applied to SICs or the Pre-SIC Amount in the order in which the notices were issued.

Schedule 5

(clause 1.1)

Roadwork Concept Plans

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd



DOP17001_046



Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd



Schedule 6

(clause 14)

Security Requirements

1. Developer to provide Security

- (a) In order to secure:
 - (i) the payment of monetary Development Contributions;
 - (ii) the carrying out of the Road Work; and
 - (iii) any costs associated with the Minister exercising any rights under this Deed to secure the transfer of the Dedication Land,the Developer has agreed to provide Security in accordance with this Schedule 6.
- (b) Any Bank Guarantee(s) required to be provided under this Schedule 6 must:
 - (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant favouree; and
 - (ii) not have an expiry date.

2. Security Requirements

- (a) On the date of entry into this Deed, the Developer must provide a Bank Guarantee to the Minister in the amount of \$20,000 to be held by the Minister until all of the Developer's obligations under this Deed are complete, despite any other provision of this Schedule 6.
- (b) On the date of entry into this Deed, the Developer must provide an additional Bank Guarantee to the Minister in the amount of \$4,750,000 to secure the Developer's obligation to carry out the part of the Road Work being Item C1.
- (c) If the Developer enters into a WAD in respect of Item C1, the Developer must provide notice to the Minister that the Developer has entered into that WAD and that notice must be accompanied by a copy of the WAD and a Bank Guarantee in the amount of \$2,000,000 to secure the remainder of the Road Work.
- (d) Within 20 business days of receipt of the notice and Bank Guarantee under clause 2(c), the Minister will return the Bank Guarantee provided under clause 2(b), or any part of that Bank Guarantee which has not been called up under clause 3 of this Schedule 6, to the Developer.
- (e) The Minister will hold the Bank Guarantee provided under clause 2(c) until all of the Developer's obligations under this Deed are complete.

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

3. Claims under a Bank Guarantee

- (a) The Minister may call upon a Bank Guarantee(s) provided in accordance with clause 2 of this Schedule 6:
 - (i) where the Developer has failed to complete the Road Work to which the Bank Guarantee relates in accordance with Schedule 4 of this Deed; or
 - (ii) where the Developer is in default of its obligations to transfer Dedication Land to the Minister or the Minister's nominee in accordance with this Deed; andretain and apply such monies towards:
 - (iii) achieving performance of the Road Work; or
 - (iv) the Costs incurred by the Minister in rectifying any default by the Developer under this Deed.
- (b) Prior to calling upon a Bank Guarantee(s) the Minister must give the Developer not less than 10 business days written notice.
- (c) If the Minister:
 - (i) calls upon a Bank Guarantee(s); and
 - (ii) applies all or part of such monies towards the Costs incurred by the Minister in rectifying any default by the Developer under this Deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee(s) in accordance with clause 3(b) of this Schedule 6,then the Minister may request that the Developer provide an additional Bank Guarantee(s) to secure performance of the Developer's obligations under this Deed in accordance with clause 4 of this Schedule 6.

4. Right to Call for Additional Security

- (a) Notwithstanding clause 2 of this Schedule 6, if the Developer has breached this Deed in a material respect, the Minister may, acting reasonably, determine that an additional Bank Guarantee(s) is required to secure the Developer's obligations under this Deed.
- (b) If the Minister makes a determination under clause 4(a) the Developer must provide such additional Bank Guarantee(s) for the amount specified by the Minister within 10 business days of a written request by the Minister and clauses 3 and 5 of this Schedule 6 apply.

5. Release of Bank Guarantee(s)

If:

- (a) the Developer has satisfied all of its obligations under this Deed secured by a Bank Guarantee(s), or this Deed is terminated; and

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (b) the whole of the monies secured by the Bank Guarantee(s) have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 6,

then the Minister will promptly return the Bank Guarantee(s) (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee(s) (as the case may be), to the Developer.

Schedule 7

(clause 1.1)

Novation Deed

THIS DEED OF NOVATION IS MADE ON THE _____ day of _____
BETWEEN

The Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000 (**Minister**)

AND

Walker Corporation Pty Ltd ABN 95 001 176 263 of Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 **and Walker Group Holdings Pty Ltd** ACN 001 215 069 of Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Existing Developer**)

AND

[Drafting Note: insert details of Transferee] (New Developer)

BACKGROUND

- A** The Existing Developer and the Minister are parties to the 'Wilton Junction Planning Agreement' dated **[Drafting Note: insert date of Planning Agreement]** (the "**Planning Agreement**").
- B** The Existing Developer has entered into an agreement to transfer the Land or part of the Land to the New Developer, or to assign its rights and obligations under the Planning Agreement to the New Developer.
- C** Clause 18.1 of the Planning Agreement requires the Existing Developer to, among other things, procure the execution of a deed by the New Developer with the Minister on terms satisfactory to the Minister, as a precondition to the sale of any part of the Land or assignment of rights and obligations under the Planning Agreement.
- D** This Deed is entered into in accordance with the terms of clause 18.1.3 of the Planning Agreement.

OPERATIVE PROVISIONS

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

1. Definitions

- (a) Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this Deed, has the same meaning as defined in the Planning Agreement.

- (b) In this Deed:

Deed means this deed and includes any schedules, annexures and appendices to this deed.

Effective Date means the date that the Land or part of the Land is transferred to the New Developer, or rights and obligations under the Planning Agreement are assigned to the New Developer.

2. Interpretation

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian currency.
- (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, the party's successors and assigns.
- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (p) Any schedules, appendices and attachments form part of this Deed.
- (q) Notes appearing in this Deed are operative provisions of this Deed.
- (r) This Deed confers rights only upon a person expressed to be a Party and not upon any other person.

3. Novation

[Drafting Note: If the whole of the Land and all rights and obligations are being transferred to the New Developer]

On and from the Effective Date, the Planning Agreement is novated from the Existing Developer to the New Developer, with the effect that:

- (a) the New Developer replaces the Existing Developer under the Planning Agreement and becomes a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Existing Developer is to be read as a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement to which, but for this Deed, the Existing Developer would have been entitled at and after the Effective Date; and
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement which, but for this Deed, the Existing Developer would have been required to perform or discharge at and after the Effective Date.

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land]

On and from the Effective Date:

- (a) the New Developer is taken to be a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Existing Developer includes a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement; and
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement;

Wilton Junction Planning Agreement

The Minister for Planning

Walker Corporation Pty Ltd

Walker Group Holdings Pty Ltd

- (e) the Existing Developer remains entitled to the rights and benefits under the Planning Agreement; and
- (f) the Existing Developer remains obliged to perform all obligations and discharge all liabilities under the Planning Agreement.

4. Release by Minister

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land, delete this clause]

With effect from the Effective Date, the Minister releases the Existing Developer from all obligations and liabilities under or in respect of the Planning Agreement to be performed or discharged at or after the Effective Date.

5. Release by Existing Developer

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land, delete this clause]

With effect from the Effective Date, the Existing Developer releases the Minister from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Date.

6. Obligations and liabilities arising before the Effective Date

Nothing in this deed releases the Existing Developer or the Minister from any obligation or liability under the Planning Agreement arising before the Effective Date.

7. Confirmation of Planning Agreement

The Minister, Existing Developer and New Developer confirm and ratify the terms of the Planning Agreement subject to the variation and novation contained in this Deed.

8. Security

The Minister will release to the Existing Developer any Security provided by the Existing Developer under the Planning Agreement provided that the New Developer has first provided the Minister with a replacement Security satisfactory to the Minister such that the Minister holds the amount of Security the Minister is entitled to hold under the Planning Agreement.

9. Notices

Any notice or communication to or by a party to this Deed must be:

- (a) sent to the Minister or to the Existing Developer in the manner required by clause 21 of the Planning Agreement;
- (b) sent to the New Developer in the manner set out in clause 21 of the Planning Agreement, assuming that the following address for service of notices to the New Developer is specified in Schedule 2 of the Planning Agreement:

"Contact: **[Drafting Note: insert contact name of New Developer]**

Address: **[Drafting Note: insert address of New Developer]**

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

Email: **[Drafting Note: insert email address of New Developer]**

and any communication to the New Developer under the Planning Agreement must be given in accordance with paragraph (b) above.

10. Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. The executed counterparts together constitutes the Deed. This Deed commences on the date when the last party has executed this Deed or a counterpart of this Deed.

11. Costs

The Existing Developer shall reimburse the Minister for the costs and disbursements of the Minister in connection with:

- (a) the preparation, negotiation or execution of this Deed; or
- (b) the placing of any document on notification relating to this Deed

12. Stamp duty etc

The Existing Developer must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplation by this instrument of novation.

13. Entire Agreement

This Deed contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation was executed.

14. Governing law and jurisdiction

This Deed is governed by and must be construed according to the law applying in New South Wales.

Execution page

Executed as a deed.

[Drafting Note: Insert execution block for the Minister]

[Drafting Note: Insert execution block for the Existing Developer]

[Drafting Note: Insert execution block for the New Developer]

Wilton Junction Planning Agreement
The Minister for Planning
Walker Corporation Pty Ltd
Walker Group Holdings Pty Ltd

SIGNED by BRENDAN NELSON as delegate
for the Minister for Planning
administering the
Environmental Planning and Assessment Act, 197

Execution

Executed as a Deed

Dated: 10 APRIL 2018



Signed sealed and delivered by the Minister for Planning

Name of Minister

PATRICK DOYLE

Signature of Minister



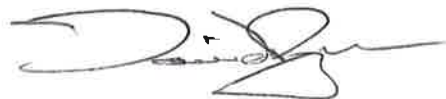
Name of Witness

Signature of Witness

Signed sealed and delivered on behalf of Walker Corporation Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001

DAVID RYAN - DIRECTOR

Name/Position



IAN GRIST - SECRETARY

Name/Position



Signed sealed and delivered on behalf of Walker Group Holdings Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001

DAVID RYAN - DIRECTOR

Name/Position



IAN GRIST - SECRETARY

Name/Position



Annexure A

(clause 1.1)

Location Plan

Three handwritten signatures in blue ink are located at the bottom right of the page. The top signature is a stylized 'D' followed by 'and'. The middle signature is a long, flowing cursive line. The bottom signature is a shorter, more compact cursive line.

